IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 742 of 2005
with
CRIMINAL MISCELLANEOUS APPLICATION NO.7953 OF 2005

For Approval and Signature:

HON'BLE MR.JUSTICE JAYANT PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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AKANKSHABEN D/O.BHANUBHAI DHORIBHAI PATEL - Applicant(s)

Versus

STATE OF GUAJRAT THR' PUBLIC PROSECUTOR & 1 - Respondent(s)

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Appearance :
MR MC BAROT for Petitioner No(s).: 1.
Mr.Gohil, Addl.PP for Respondent No(s).: 1.
MR MURALI N DEVNANI for Respondent No(s).: 2.
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CORAM : HON'BLE MR.JUSTICE JAYANT PATEL

Date : 09/08/2005

ORAL JUDGMENT

1.Rule. Mr.Gohil, Ld.APP waives service of rule for respondent No.1-State and Mr.Devnani waives service of rule on behalf of respondent No.2. With the consent of

the parties, matter is taken up for final hearing today.

2. The short facts of the case are that the petitioner has filed complaint for the offences under section 498A and others of I.P.C vide C.R.No.I-35/05 with Dakore Police Station. The respondent No.2 was arrested and thereafter while releasing him on bail, the Ld.Magistrate has put the condition of deposit of passport. The respondent No.2 had deposited the passport as per order 19.4.05 and the respondent had carried the matter before the Ld.Sessions Judge by preferring revision being Revision Application No.22/05 qua challenging the imposition of condition of deposit of passport. The Ld.Sessions Judge found that the condition of deposit of passport deserves to be modified by directing the respondent No.2 to produce the certified xerox copy of the passport and imposed a condition that without prior permission of the court the respondent No.2 accused shall not leave the limits of Nadiad. Against said order, the petitioner has approached this court by preferring the present petition.

3. Heard Mr.Barot for the petitioner and Mr.Gohil, Ld. APP and Mr.Devnani for respondent No.2. Mr.Barot,

Ld.advocate for the petitioner submitted that the petitioner who is wife was given ill-treatment and she was beaten and therefor the complaint was filed and the matter is pending. He submitted that the petitioner was beaten by the respondent No.2 husband though the bungalow was purchased by receiving the consideration from the father of the petitioner. He also submitted that there was illegal demand of dowry and consequently the cruelty was complained. Mr.Barot submitted that the learned Sessions Judge ought not to have ordered for modifying the condition of deposit of passport since the discretion was properly exercised by the learned Magistrate. He also submitted that if the passport is not deposited, the respondent No.2-accused may run away to Middle East countries, namely, Kuwait and he will not come back. He submitted that the petitioner has also preferred the application for maintenance under section 125 of Cr.P.C and if the passport is not deposited, it will not be possible for the petitioner to get the amount of maintenance even if ordered and therefore he submitted that the order passed by the Ld.Sessions Judge deserves to be quashed.

4. Mr.Gohil, Ld.APP has supported the order passed by the Ld.Sessions Judgge.

5. Mr.Devnani, Ld.advocate for the respondent No.2 submitted that the respondent No.2 has got the employment at Kuwait where he has to earn salary of Rs.50,000/-p.m. And therefore if the passport is deposited the respondent No.2 will not be in a position to resume the duty and he further submitted that the respondent No.2 shall come back to India as and when it is so desired by the trial court and the respondent No.2 is also ready to give undertaking for such purpose. Mr.Devnani also submitted that the respondent No.2 is also ready to abide by the terms and conditions which may be deemed proper by this court if the passport is not to be deposited. He submitted that the respondent No.2 is ready to abide by the conditions which may be imposed by this court in addition to the conditions which are imposed by the Ld.Sessions Judge.

6. Considering the facts and circumstances, it appears that as such the Ld.Sessions Judge while exercising the revisional jurisdiction ought to have ensured that proper security is provided even if the passport is not to be deposited for facilitating the conduct of the trial. The Ld.Sessions Judge has recorded that the respondent N.2 is not desirous to go Middle East countries. However, Mr.Devanani, Ld.counsel for the

respondent No.2 accused during the course of hearing submitted that the respondent No.2 is desirous to visit Kuwait for accepting the employment offered to him and therefore even while exercising revisional jurisdiction for modifying the conditions imposed by the Ld.Magistrate, the Ld.Sessions Judge ought to have put stringent conditions for ensuring that the presence of the accused is secured at the time of trial and the proceedings of trial are not hampered on account of nonavailability of accused. As Mr.Devnani, Ld.advocate for the respondent No.2 has left it to the discretion of this court for imposing conditions I find that no further discussion is required on the said aspect.

7. Considering the facts and circumstances of the case as the accused is to get employment in Kuwait for the salary of Rs.50,000/-p.m it would be just and proper to direct the accused to deposit amount of Rs.3 lacs with the trial court as security for remaining present at the time of trial. As and when the passport is deposited/re-deposited with the trial court the accused would be entitled to get back the amount or in case the accused is not remaining present at the time of trial, the Ld.Magistrate/trial court may also pass the order to forfeit the amount. With a view to see that there

may not be any loss of interest the Ld.Magistrate/trial court may deposit the amount of security deposit with any nationalised bank in the FD Receipts initially for a period of one year which may be extended subsequently in case the trial is not completed within that period. The aforesaid should be on the additional condition of giving undertaking to the trial court by the accused to remain present as and when so intimated by giving intimation through his advocate two months in advance for cooperating with the trial.

8. Considering the facts and circumstances, it appears that since the aforesaid conditions are not provided by the Ld.Sessions Judge while exercising revisional jurisdiction, the order passed by the Ld.Sessions Judge to that extent can be said as not proper and deserves to be modified accordingly.

9. In view of the aforesaid, the impugned judgment and order dated 26.5.05 passed by the Ld.Sessions Judge in Criminal Revision Application No.22/05 deleting condition No.(D) in the order passed by the Ld.Magistrate dated 14.9.05 is not disturbed and is continued on condition that the respondent No.2-accused deposits an amount of Rs.3 lacs with the trial court and further that the respondent N.2 accused shall give

undertaking to the trial court that he shall remain present at the time of conducting trial as and when the he is accordingly intimated two months in advance through his advocate. The respondent No.2 accused shall also furnish his present address within a period of one month in case any change is there in the address. The respondent No.2 accused may be at liberty to represent in the trial court through his lawyer. The condition imposed by the Ld.Sessions Judge shall get substituted by the aforesaid condition. In case the passport is already deposited the same shall be returned after all the aforesaid conditions are complied with by the respondent No.1.

10. The petition is partly allowed to the aforesaid extent. Rule made absolute accordingly.

11. In view of the order passed in main Spl.Cri.A.No.742/05 no order is required to be passed in Cri.Misc.Appln.No.7953/05 and same shall stand disposed of accordingly.

(JAYANT PATEL,J)

9.8.05/murty